

DOCUMENT RESUME

04350 - [B3394643]

[Claim for Drill Pay and Weekend Pay]. B-190113. November 30, 1977. 2 pp.

Decision re: Nathaniel R. Ackerman; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Military Personnel.

Budget Function: National Defense: Department of Defense - Military (except procurement & contracts) (051).

Organization Concerned: Department of the Army: National Guard Bureau.

Authority: (P.L. 93-604, title VIII; 88 Stat. 1959; 88 Stat. 1965; 54 Stat. 1061, as amended; 31 U.S.C. 71a (Supp. IV)). B-187084 (1976). B-171744 (1972).

A former member of the Army National Guard appealed a settlement which disallowed his claim for National Guard drill pay and weekend pay during the period September 26 through November 16, 1949. The claim, which was first received by GAO in May 1977, was time-barred from consideration since it was received more than 6 years after it first accrued. (Author/SC)

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DECISION



Richman
M.P.

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190113

DATE: November 30, 1977

MATTER OF: Mr. Nathaniel R. Ackerman

DIGEST: A former member's claim for drill pay and weekend pay, incident to National Guard service in 1949, which claim was first received in the General Accounting Office (GAO) in May 1977, is time-barred from consideration by 31 U.S.C. 71a (Supp. IV, 1974), since it was first received in GAO more than 6 years after it first accrued.

This action is in response to a letter received September 6, 1977, from Mr. Nathaniel R. Ackerman (a former member of the Army National Guard) which, in effect appeals our Claims Division settlement dated August 29, 1977, which disallowed his claim for National Guard drill pay and weekend pay during the period September 26 through November 16, 1949, incident to his service in the National Guard.

The record shows that Mr. Ackerman first asserted his claim by letters dated February 10 and April 5, 1977, to the United States Army Finance and Accounting Center, Indianapolis, Indiana, claiming that due to his "federal recognition pending" he did not receive any drill pay or weekend pay during the period September 26 through November 16, 1949 (when he briefly held the rank of Warrant Officer). The Army Finance and Accounting Center forwarded his claim to the Claims Division of our Office (where it was first received on May 16, 1977), for consideration under the provisions of the barring act, since it had been more than 6 years since the claim had accrued.

In the August 29, 1977 settlement, our Claims Division advised the claimant that the barring act of October 9, 1940, 54 Stat. 1061, as amended by Title VIII of Public Law 93-604, approved January 2, 1975, 88 Stat. 1959, 1965, 31 U.S.C. 71a (Supp. IV, 1974), was applicable to his claim. That act provides in pertinent part:

"(1) Every claim or demand * * * against the United States cognizable by the General Accounting Office * * * shall be forever barred unless such claim * * * shall be received in said office within 6 years after the date such claim first accrued * * *."
(Emphasis supplied.)

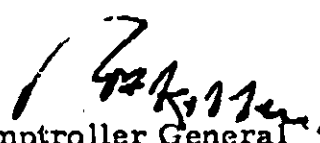
B-190113

Under that provision of law, as a condition precedent to a claimant's right to have his claim considered by the General Accounting Office, his claim must be "received in said office" within the 6-year period. The primary purpose of the barring act is to relieve the Government of the necessity of retaining and going back over old records for the purpose of settling stale claims. This Office does not have authority to waive any of the provisions of the act or make any exceptions to the time limitation it imposes. See decision B-187084, October 22, 1976.

In his request for reconsideration, Mr. Ackerman seeks "special consideration" on the basis that since 1950 he has been in and out of hospitals due to illness and that in 1950 regulations did not authorize his drill pay until federal recognition was received. In this connection, we note that apparently the claimant was a participating member of the Army National Guard until his honorable discharge on August 20, 1959.

While it is unfortunate that the claimant's illness may have interfered with his asserting his claim, the act of October 9, 1940, as amended, precludes our Office from giving consideration to any part of the claim, since it was not received in this Office until May 16, 1977, well over 6 years after the time it first accrued. This Office has been granted no power of dispensation under the act to make exceptions due to illness of claimants or other similar reasons. See decision B-171744, July 18, 1972.

Accordingly, since we are precluded by law from taking further action on Mr. Ackerman's claim the action taken by our Claims Division is correct and is sustained.


Deputy Comptroller General
of the United States